

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION SIX

AUTOMATIC SPRINKLER PROTECTION, INC.

Employer

and

Case 6-RC-12125

ROAD SPRINKLER FITTERS U.A. LOCAL  
UNION 669, AFL-CIO

Petitioner

**REGIONAL DIRECTOR'S DECISION AND**  
**DIRECTION OF ELECTION**

The Employer, Automatic Sprinkler Protection, Inc., is engaged in the installation, inspection and repair of fire protection sprinkler systems at various job sites between Williamsport and State College, Pennsylvania, where it currently employs approximately 14 employees. The Employer's office is located in Williamsport, Pennsylvania. The Petitioner, Road Sprinkler Fitters U.A. Local Union 669, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit, as amended at the hearing, of all full-time and regular part-time employees engaged in the installation, inspection, maintenance and/or repair of automatic fire protection systems; excluding all inventory clerks,<sup>1</sup> designers, delivery employees, all office clerical employees and guards, professional employees and supervisors as defined in the Act.

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<sup>1</sup> During the hearing, the parties stipulated, and I find, that inventory clerk Margaret Blakney is excluded from the unit herein found appropriate on the basis that she does not share a sufficient community of interest with the petitioned-for employees. The parties further stipulated that Richard Shank has no community of interest with the petitioned-for unit and is, therefore, excluded from the unit found appropriate herein.

At the hearing and in their briefs, the parties disagree on whether Christopher Sowle is a statutory supervisor who should be excluded from the unit. The Petitioner, contrary to the Employer, contends that Sowle must be excluded from any unit because he is a statutory supervisor.

I have considered the evidence and arguments presented by the parties as to the supervisory status of Sowle. I have concluded, as discussed below, that the Petitioner has not met its burden of establishing that Sowle is a statutory supervisor. Accordingly, I have directed an election in a unit of approximately 21 employees,<sup>2</sup> including Sowle.

To provide a context for my discussion of the issue, I will first provide an overview of the Employer's operations. I will then present, in detail, the facts and reasoning that support my conclusions on the issue.

## **I. OVERVIEW OF OPERATIONS**

The Employer installs, inspects and repairs fire protection sprinkler systems at construction sites in and around Williamsport, Pennsylvania. It appears from the record that the Employer's operations are divided into field operations and office operations. The Employer's office is located in Williamsport, Pennsylvania. The Employer's general manager, Douglas Fries, is responsible for the overall operations of the Employer. Until November 2001, the Employer employed a project manager who also worked out of the Employer's office. The Employer's accounting/payroll personnel and its engineer also work at the office.

The Employer's field operations take place at various job sites. The record establishes that, depending on the volume of work, the Employer runs two to six jobs at a time. A crew consisting of a combination of two to three pipe fitters and helpers work on each job site. Field foremen oversee the work performed at the job sites and, at times, are responsible for

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<sup>2</sup> During the hearing, the parties stipulated that, based on meeting the criteria of the Daniel-Steiny formula, the following individuals are eligible to vote: Scott Workman, Thomas Miller, Randy Barry, Paul Husar, George Weber, Sr., and Chad Buttorff. Accordingly, approximately six individuals who are not currently employed by the Employer are eligible to vote in the election directed herein.

overseeing work at two separate job sites. In addition to their oversight duties, field foremen work directly with the crew to complete the project.<sup>3</sup>

## **II. SUPERVISORY STATUS OF CHRISTOPHER SOWLE**

Sowle has worked in the sprinkler installation business for 21 years. Before November 2001, Sowle was a field foreman. As such, Sowle was responsible for overseeing the installation and fabrication of fire sprinkler systems by employees. The record indicates that in November 2001, then-project manager Shane Luvine left the Employer's employ, and Sowle volunteered to assist General Manager Fries with the functions formerly performed by Luvine, while continuing to perform certain field duties until a new project manager is hired. The record indicates that Sowle's offer to assist Fries was accepted, and the Employer has continued to search for a project manager to replace Luvine.

The record establishes that the Employer has a field handbook covering the terms and conditions of employment of the field employees and an office handbook covering office employees. Sowle's terms and conditions of employment are set forth in the field handbook. Sowle also enjoys the same fringe benefits as field employees. Likewise, Sowle works from 7 a.m. to 3:30 p.m., as do the other field employees, and not from 9 a.m. to 5 p.m. like the employees who work in the office. Sowle's work attire consists of blue jeans and work boots, like the field employees. Also like the other unit employees, Sowle reports his time on a time sheet, is paid on an hourly basis and receives overtime.<sup>4</sup>

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<sup>3</sup> There is no contention or evidence that field foremen are supervisors within the meaning of the Act.

<sup>4</sup> Since November 2001, Sowle has recorded the time spent working in the field on the same type of weekly timesheet which is utilized by all of the field employees. For the additional duties performed in the office, Sowle utilizes a special timesheet patterned after the timesheet used by the individual responsible for the Employer's design work.

As noted, prior to November 2001 Sowle's title was field foreman.<sup>5</sup> His duties included performing field checks,<sup>6</sup> troubleshooting, coordinating time issues with other contractors on the job site, and overseeing the work of the crews on one or more job sites, as well as performing installation work.

Since November 2001, Sowle has maintained all of these duties, but the onsite installation work he performs primarily involves the more complex work involving installation of fire pumps and onsite problem solving. Sowle also coordinates work on the projects with the other contractors on jobsites. When Sowle performs such work, his time is billed directly to the job. When he works in the office, his time is "indirectly billed" as it is for office staff personnel.<sup>7</sup> By virtue of his experience, Sowle is often consulted by other employees concerning questions about the blueprints. The record establishes that blueprint questions are also referred to Fries and that, if necessary, the Employer's engineer is consulted.

As to his additional duties since November 2001, Sowle is responsible for interviewing and testing job applicants, checking timecards for and resolving any inaccuracies, scheduling and assigning employees to jobs and taking call-offs and requests for time off. Since November 2001, Sowle's work in the office has been performed in an open area at a desk which is located across from the office of General Manager Fries.

### **Analysis and Resolution of Supervisory Issues**

Before examining the specific duties and authority of Sowle, I will review the requirements for establishing supervisory status. Section 2(11) of the Act defines the term supervisor as:

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<sup>5</sup> The record indicates that since November 2001 Sowle has not had an official title.

<sup>6</sup> A field check is performed to compare what is shown on the blueprints with the actual site in order to determine whether the work planned can actually be performed.

<sup>7</sup> The record indicates that Sowle has worked in the field for a full eight-hour shift on several occasions in the six-month period preceding the hearing, but often works at a job site for less than a full shift.

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

To meet the definition of supervisor in Section 2(11) of the Act, a person needs to possess only one of the 12 specific criteria listed, or the authority to effectively recommend such action. Ohio Power Co. v. NLRB, 176 F.2d 385 (6<sup>th</sup> Cir. 1949), cert. denied 338 U.S. 899 (1949). The exercise of that authority, however, must involve the use of independent judgment. Harborside Healthcare, Inc., 330 NLRB 1334 (2000).

The burden of proving supervisory status lies with the party asserting that such status exists. Kentucky River Community Care, Inc., 532 U.S. 706, 711-712 (2001); Michigan Masonic Home, 332 NLRB No. 150, slip op. at 1 (2000). The Board has frequently warned against construing supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. See, e.g., Vencor Hospital – Los Angeles, 328 NLRB 1136, 1138 (1999); Bozeman Deaconess Hospital, 322 NLRB 1107, 1114 (1997). Lack of evidence is construed against the party asserting supervisory status. Michigan Masonic Home, supra, slip op. at 1. Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory authority. Sears, Roebuck & Co., 304 NLRB 193 (1991).

Possession of authority consistent with any of the indicia of Section 2(11) is sufficient to establish supervisory status, even if this authority has not yet been exercised. See, e.g., Fred Meyer Alaska, 334 NLRB No. 94, slip op. at 4 n. 8 (2001); Pepsi-Cola Co., 327 NLRB 1062, 1064 (1999). The absence of evidence that such authority has been exercised may, however, be probative of whether such authority exists. See Michigan Masonic Home, supra, slip op. at 3; Chevron U.S.A., 309 NLRB 59, 61 (1992).

With regard to whether Christopher Sowle possesses any of the 12 indicia of supervisory status listed in Section 2(11) of the Act, it is noted that there is no contention or record evidence that he discharges, suspends, lays off, recalls, promotes, rewards, adjusts employee grievances or effectively recommends such actions. Accordingly, I will address only the Petitioner's arguments that Sowle is a supervisor because of his role in hiring, assigning and transferring employees, responsibly directing employees, and recommending discipline of employees.

In considering whether Sowle possesses any of the supervisory authority set forth in Section 2(11) of the Act, I note that in enacting this section of the Act, Congress emphasized its intention that only supervisory personnel vested with "genuine management prerogatives" should be considered supervisors, and not "straw bosses, leadmen, set-up men and other minor supervisory employees." Chicago Metallic Corp., 273 NLRB 1677, 1688 (1985). I conclude, for the reasons discussed below, that the Petitioner has not met its burden of establishing that Sowle is a statutory supervisor. Rather, Sowle is the type of individual that Congress did not wish to exclude from coverage by the Act.

### **1. Hiring of Employees**

The Petitioner contends that Sowle can hire or effectively recommend the hiring of unit employees. However, the examples of hiring found in the record show that Sowle did not make the decision to offer employment. Initially, the record establishes that Fries determined the hiring procedure for field employees. That procedure involves completion of an application, an interview, and the completion of a written test relating to the reading of blueprints. Since November 2001, Sowle has conducted all interviews and has provided applicants with the test.

The Petitioner cites the hiring of Frank Heddings approximately four months ago as evidence of Sowle's supervisory authority. The record establishes that Heddings called the facility several times to inquire about possible employment. He was later contacted by Sowle, who advised him to come to the facility to complete an application and take the Employer's test. When Heddings came to the facility, he completed an application and was interviewed by

Sowle. Sowle then provided Heddings with the test. When Heddings finished the test, Heddings gave it to Sowle. Approximately 15 to 20 minutes later, Sowle returned and offered Heddings a job. Both Sowle and Fries testified that during that period, Sowle consulted with Fries and Fries reviewed the application and determined that Heddings should be hired.

The record also contains evidence regarding the hiring of Charlie Weber. In that instance, several applicants were interviewed and tested by Sowle. A day or two after Weber was interviewed, and after consultation with and authorization by Fries, Sowle offered Weber a job.

The record further establishes that Sowle has recommended applicants for employment who have not been approved by Fries. The record contains one specific instance of Sowle seeking authority to hire an applicant, but, after reviewing the application, Fries decided that the individual would not be offered employment because the individual had too many brief intervals of employment.

## **2. Assigning and Responsibly Directing Employees**

The Petitioner contends that Sowle assigns employees and responsibly directs them in their work. Included in Sowle's responsibilities, both currently and prior to November 2001, is the coordination with other contractors on the job sites as to the priority of work, method to be utilized to complete various tasks, and number of employees needed. The record establishes that Fries consults with Sowle before Sowle coordinates with other contractors.

Each week, Sowle and Fries meet to discuss the upcoming workweek. Fries determines the number of crews needed and generally which employees will be assigned to particular job sites.<sup>8</sup> Based on the requirements of each project, Sowle completes daily and weekly assignments of field employees so that employees will know which job sites to report to each

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<sup>8</sup> The Petitioner asserts that Sowle transfers employees based on the fact that at the end of a project, either Sowle or Fries will advise the field foreman and employees where they are to report for the next job. No evidence was adduced to show that Sowle makes this determination independently of Fries. Rather, Sowle testified that Fries determines where employees are to be assigned.

day. Sowle then relays the assignment to the field employees. As to assignments for which Sowle need not check with Fries, the record indicates that if the duration of a job is to last for several weeks and an employee questions where he is to report within the next few days, Sowle will advise the employee that he will be reporting to the same job.

If overtime is needed on a particular job, Fries authorizes Sowle to assign the overtime. The record indicates that after January 2002, at least one former field foreman contacted Sowle when he needed additional manpower. The field foreman, who testified at the hearing herein, admitted that Sowle might have indicated on various occasions that he would check on the situation and/or that he would have to consult with Fries.

The assignment of work pursuant to plans and schedules developed by higher management does not establish supervisory status. Arlington Electric, Inc., 332 NLRB No. 74 (2000). Accordingly, the Petitioner has not provided evidence sufficient to establish that Sowle utilizes independent judgment in the assignment of work.

Related to the criteria of assignment of employees is the procedure followed by employees to request time off from work. Employees submit written requests for vacation or sick leave, as this information is needed to coordinate crews. Although not entirely clear, it appears that Sowle cannot independently grant these requests. If an employee is unexpectedly ill or otherwise unable to report to work, the employee generally calls Sowle. Sowle can approve such an oral request for time off, without checking with Fries, but will discuss the request with Fries if time permits. Field foremen also have the authority to approve "emergency" requests for time off from employees in the field. In such an instance, the field foreman will then relay the information to Sowle, as this information is needed to determine the manning of projects. Sowle has sent employees home if work is slow, pursuant to standing instructions from Fries.



The record establishes that the Employer utilizes time sheets on which field employees list their name, job code,<sup>9</sup> account number,<sup>10</sup> and hours worked. Sowle assists Fries in checking the time records for accuracy and to ensure that the jobs are correctly billed. If an error is suspected, Sowle will call the field employee. In addition, if an employee has a question regarding the recording of his time, the employee will call Sowle to discuss the question. In Sowle's absence, field employees direct their questions regarding time records to a payroll employee.

### **3. Discipline of Employees**

The Petitioner contends that Sowle has the authority to recommend discipline. The record contains one instance when Sowle noticed that an employee was consistently working only two to three days per week. When Sowle advised Fries of the situation, Fries directed Sowle to write a memorandum to the employee. Fries then reviewed the document before Sowle issued it to the offending employee. In a separate situation involving employee absenteeism, Fries wrote the memorandum to the employee.<sup>11</sup>

### **III. CONCLUSION AS TO THE STATUS OF SOWLE**

Based on the foregoing, the record as a whole, and having carefully considered the arguments of the parties at the hearing and in their briefs, I find that the Petitioner has failed to meet its burden of proving that Sowle is a statutory supervisor. Rather, Sowle is, at best, merely a "strawboss" who does not exercise any independent judgment with respect to the Section 2(11) indicia. See, e.g., Somerset Welding & Steel, Inc., 291 NLRB 913, 914 (1988); Dura-Vent Corporation, 257 NLRB 430, 431-432 (1981). Although Sowle currently spends the majority of his time at the office assisting Fries, the record does not establish that he

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<sup>9</sup> The Employer utilizes a list of job codes which are abbreviations to describe the work performed.

<sup>10</sup> The work performed on each job is billed to the customer.

<sup>11</sup> The field employees' handbook apparently contains a progressive discipline policy.

exercises authority requiring the use of independent judgment in the interest of the Employer. Although Sowle participates in the hiring and disciplinary process, the record establishes that Fries makes the final determinations as to these matters. Finally, the record shows that Sowle shares the same pay structure, benefits and working conditions with other field employees. Accordingly, I conclude that Sowle is not a supervisor and I have included him in the unit.

#### **IV. FINDINGS AND CONCLUSIONS**

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.

3. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section (9)(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees engaged in the installation, inspection, maintenance and/or repair of automatic fire protection systems employed by the Employer at and out of its Williamsport, Pennsylvania, facility; excluding all office clerical employees, inventory clerks, designers, delivery employees and guards, professional employees and supervisors as defined in the Act.

#### **V. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Road Sprinkler Fitters U.A.

Local Union 669, AFL-CIO. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

**A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In accordance with the Board's holdings in Daniel Construction Company, Inc., 133 NLRB 264 (1961), as modified 167 NLRB 1078, 1081 (1967), and Steiny and Company, Inc., 308 NLRB 1323, 1326 (1992), I find the following individuals are also eligible to vote in the election: those individuals who were employed in the unit for either (1) a total of 30 working days or more within the 12 months immediately preceding the eligibility date for the election or (2) a total of 45 working days or more within the 24 months immediately preceding the eligibility date for the election, with some employment in the immediately preceding 12-month period, and who have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed by the Employer.<sup>12</sup> Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

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<sup>12</sup> As noted above, the parties stipulated to the application of this eligibility formula.

### **B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before **October 11, 2002**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (412) 395-5986. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting

requirement may result in additional litigation if proper objections to the election are filed.

Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so precludes employers from filing valid objections to the election based on nonposting of the election notice.

## **VI. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **October 18, 2002**. The request may **not** be filed by facsimile.

Dated: October 4, 2002

/s/Stanley R. Zawatski  
Stanley R. Zawatski,  
Acting Regional Director,  
National Labor Relations Board  
Region 6

### **Classification Index**

177-8560-1000

177-8560-9000